

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 N. Capitol Street, NE, Suite 9100
Washington, DC 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
Petitioner,

v.

INTERNATIONAL GROUP LLC
Respondent

Case No.: CR-I-07-Q103999

FINAL ORDER

I. Introduction

This case involves a Notice of Infraction served by the Government on Respondent International Group LLC on October 9, 2007, alleging a violation of 14 DCMR 800.13 for an accumulation of trash and debris for more than seven calendar days. In the Notice, the Government alleged that the violation occurred on August 24, 2007, at 508 M Street, NW (the “Property”) and sought a fine of \$500.

Respondent denied the violation, and a hearing was set for January 4, 2008. At the hearing convened on that date, Geraldine Owens of the Office of Civil Infractions appeared for the Government and presented the Government’s case based on documents and an interview with the charging inspector prior to the hearing. John Chung, property manager for the Property, appeared on behalf of Respondent.

II. Findings of Fact

The Property is a vacant single family rowhouse. Petitioner's Exhibit "PX" 103. In response to a complaint, Inspector Tiffany Magruder initially inspected the Property on July 31, 2007. PX 103 and 106. As a result of her observations, she issued a Housing Violation Notice, which required that accumulations of trash in the front and rear yards of the building be removed within seven days of service of the Housing Violation Notice. PX 101.

The address provided by Respondent as the address of its registered agent is 380 Eastern Ave. N.E. PX 107. In an affidavit, Inspector Magruder stated that she attempted to personally serve the Housing Violation Notice at the address of Respondent's registered agent at 380 Eastern Ave. N.E. on August 2, 2007. However, she reported that she had been unable to effect service because the sub carryout restaurant at that address was "vacant/unoccupied." Because she had been unable to serve Respondent's registered agent, Inspector Magruder served the Notice of Housing Violation on an agent of the District of Columbia's Corporation Division. PX 108.

Inspector Magruder returned to the Property on August 27, 2007. She observed and photographed the front and rear yards of the Property. The photos show trash that includes boards, an overturned chair, miscellaneous construction materials and other debris. PX 112, 113.

Respondent maintained that it never received the Housing Violation Notice and consequently had no opportunity to correct the violation before the Notice of Infraction was issued. Respondent disputes the Government's claim that the office of its registered agent at 380 Eastern Ave. N.E was vacant and unoccupied. Mr. Chung testified that he is also the property manager for that property, and that in connection with his duties as property manager, he visits

the business located at 380 Eastern Ave. N.E. frequently, at least a few times a month. He further testified that the business has been operated continuously by the same owner since 2002, and that except for a few major national holidays, the business is opened daily from 11 a.m. to 11 p.m.

The direct testimony of Mr. Chung that 380 Eastern Ave. has been occupied continuously is in conflict with the statement of Inspector Magruder in the affidavit that the premises was vacant and unoccupied when she attempted service. Although the Inspector's statement is sworn, it is an out of court statement offered for the truth of the matter asserted and is therefore hearsay. Since the inspector's statement on which the Government relies is hearsay, and the inspector was not available for cross examination, I find that the Government's evidence is insufficient to overcome Mr. Chung's direct testimony that the premises located at 380 Eastern Ave. N.E. is occupied and is opened daily except for a few national holidays. *See Compton v. District of Columbia Board of Psychology* 858 A. 2d 470 (2004) (although hearsay can constitute substantial evidence, the reliability of hearsay is diminished when it is contradicted by direct testimony.)

III. Conclusions of Law

The Government may enforce most regulations to which the Civil Infractions Act applies by seeking fines in Notices of Infraction without prior notice or opportunity to correct the violation. However, by virtue of section 14 DCMR 105, the Government must provide prior notice and a reasonable opportunity to correct, before the Government may seek fines and penalties for housing code violations, including the violation of 14 DCMR 800.13 charged in this case.¹ This

¹ Such notice is required for alleged violations of all regulations in Subtitle A of Title 14, which includes Chapters 1-13 of Title 14. 14 DCMR 105; 14 DCMR 100.1.

requirement has been recognized in numerous decisions issued by this administrative court. *See*, for example, *DCRA v. Abdullahi Barrow* OAH No. CR-I-06-R102358 (Final Order 2006).

The document the Government uses to provide the required notice and opportunity to correct is called a Housing Violation Notice. There are several alternative means that the Government may rely on to properly serve this notice. 14 DCMR 105.4 Service on a corporation's registered agent is one of the permitted methods.² When the registered agent "cannot with reasonable diligence be found at the registered office of the corporation in the District," the Mayor shall be an agent of the corporation upon whom any process or notice may be served. D.C Official Code § 29-101.12 (b).

The Government relied on this provision to effect the legally required notice when the Inspector served the Housing Violation Notice on the Superintendent of Corporations. PX 106. However, since based on the direct testimony of Mr. Chung, I have found that the registered office was opened daily for twelve hours except on a few national holidays, Respondent's registered agent could have been found at its registered office with the exercise of reasonable diligence.

I must therefore conclude that the Government did not exercise reasonable diligence to locate the registered agent. Consequently, it could not rely on service on the Superintendent of Corporations to provide Respondent with the required notice and opportunity to correct before seeking fines for the violation. Accordingly, the Notice of Infraction will be dismissed.

² D.C Official Code § 29-101.12 (a) provides:

The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. [Emphasis added.]

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this 8th day of January, 2008. :

ORDERED, that the Notice of Infraction (Q103999) is **DISMISSED**, and it is further:

ORDERED, that appeal rights of any person aggrieved by this Order are set forth below.

January 8, 2008

_____/s/_____
Mary Masulla
Administrative Law Judge